

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARCELLOUS L. WALKER, ERIC HENDRICKSON,  
DANIEL ARENDS, FREDICK LEE PHARM,  
SHERMELL TABOR, EDWIN JONES,  
BRANDEN SUSTMAN and JOSHUA ROGERS,

Plaintiffs,

v.

KEVIN R. HAYDEN, DHFS Secretary; and  
STEVE WATTERS, SRSTC Director,

Defendants.

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ORDER

3:07-cv-00675-bbc

Defendant Steve Watters and former defendants Steve Schneider, Donna Hendrich and SRSTC Institution Review Board have filed a motion to dismiss this action against them on the ground that they have not been served properly with plaintiffs' complaint because the summons they received was not issued by the clerk of court. The motion will be denied as moot.

In an order entered in this case on January 10, 2008, I severed plaintiffs' action into two lawsuits and dismissed from this lawsuit Steve Schneider, Donna Hendrich and SRSTC

Institution Review Board. Therefore, plaintiffs' failure to serve these individuals with a summons issued by the clerk of court is a concern of no particular moment.

As for defendant Watters, I instructed plaintiffs in the January 10 order to serve him and defendant Hayden with their complaint and to submit proof of service no later than February 28, 2008. I provided plaintiff Walker with a memorandum that sets out instructions for serving a complaint on individuals in a federal lawsuit, and I sent him the forms plaintiffs needed for seeking waiver of service of a summons from the defendants. Because I have given plaintiffs another opportunity to serve their complaint on defendant Watters, plaintiffs' present failure to serve defendant Watters with a summons issued by the clerk of court is not a failure warranting dismissal of the action against Watters.

#### ORDER

IT IS ORDERED that the motion to dismiss of defendant Watters and former defendants Steve Schneider, Donna Hendrich and SRSTC Institution Review Board is

DENIED as moot.

Entered this 23d day of January, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge